

Federally-chartered credit unions do not incur Use Tax liability when making purchases of tangible personal property for use or consumption. (See 12 U.S.C. 1768.) Retailers making sales of tangible personal property to Federal credit unions are not able to reimburse themselves for the Retailers' Occupation Tax they incur as a result of making such sales by collecting the reimbursing Use Tax. Nonetheless, retailers making sales of tangible personal property to Federal credit unions do incur Retailers' Occupation Tax liability on their gross receipts from such sales." See 86 Ill. Adm. Code 130.2085. (This is a GIL).

April 7, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated February 22, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Reference is made to our conversation of February 18, 1999, and your letter of June 24, 1998, which we have discussed previously, regarding the Illinois Retailers' Occupation Tax ('ROT') and how it affects my company, the COMPANY. I note that the Department of Revenue Regulations regarding the ROT, in Title 86, Part 130, Section 130.2085, list in a)1) certain entities, the retail sellers to whom are NOT exempt from the ROT for those sales. These are Federally-chartered credit unions, national banks, State-chartered banks, Federally-chartered savings and loan associations, 'and other privately-owned financial institutions.' One common thread among those institutions appears to be that they are privately owned, as opposed to being owned by the government.

The Regulations also list, in a)2), certain entities, the retail sellers to whom ARE exempt from the ROT for those sales, including Federal Reserve Banks, Federal Land Banks and Federal Home Loan Banks. It is not clear to me what common characteristics the Regulations are focusing on that are shared among this latter group of three kinds of federally-chartered institutions. Our review of the statutes that govern Federal Reserve Banks, Federal Land Banks and Federal Home Loan Banks appears to indicate that all three of those kinds of entities are privately owned and funded, not owned or funded by the government. Each has an express exemption from state taxes in its charter act (as do the federally chartered credit unions, and as does COMPANY). We are unable to determine if Federal Home Loan Banks and Federal Reserve

Banks are for-profit institutions, as COMPANY as. It appears that Federally-chartered credit unions and Federal Land Banks are not-for-profit.

1. We are trying to understand why sellers to Federal Reserve Banks, Federal Land Banks and Federal Home Loan Banks have an exemption under the ROT and sellers to COMPANY do not. Will you please have the Department of Revenue's lawyers explain that reason in writing to me?

You indicated that the Regulations are written by a joint committee including members of the Legislative Branch and members of the Department of Revenue. Please have the Department lawyers also specify in their letter to me:

2. What is the citation to the portion of the ROT statute that provides that the Department of Revenue and/or some other body will write regulations governing the ROT?
3. Which officials (titles) of the Legislative branch and the Department of Revenue (and any other executive branch participant) comprises the committee that writes the Department of Revenue Regulations for the ROT?
4. Do those Regulations for the ROT have the force of law, and are they considered by the courts to be binding, as are the provisions of the ROT statute itself?

Thank you for your assistance in this matter.

Pursuant to 86 Ill. Adm. Code 130.2080, enclosed, sales made by retailers to governmental bodies (Federal, State, local, or foreign) are not subject to Retailers' Occupation Tax (sales tax). Likewise, the governmental body is not subject to the corresponding Use Tax. Generally, in order to make tax-free purchases, these governmental bodies must first apply for and obtain an exemption number from the Department. They provide this number to retailers, who retain it to document the tax-exempt nature of their sales.

There exist a number of entities created by federal statute which are not considered governmental bodies, but which nonetheless receive exemptions under federal law from a variety of State taxes. Because these entities are not governmental bodies, they are not eligible for exemption numbers. Neither federal nor Illinois law exempts retailers from Retailers' Occupation Tax on sales to such entities. As a result, while the entity is exempt from Use Tax by virtue of federal law, the retailer still incurs a Retailers' Occupation Tax liability.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.2085. This is the regulation for Sales to or by Banks, Savings and Loan Associations and Credit Unions. As you will note, Section 130.2085(a)(1) provides that, "Federally-chartered credit unions do not incur Use Tax liability when making

purchases of tangible personal property for use or consumption. (See 12 U.S.C. 1768.) Retailers making sales of tangible personal property to Federal credit unions are not able to reimburse themselves for the Retailers' Occupation Tax they incur as a result of making such sales by collecting the reimbursing Use Tax. Nonetheless, retailers making sales of tangible personal property to Federal credit unions do incur Retailers' Occupation Tax liability on their gross receipts from such sales." It appears that this regulation may be applicable to your business. In that case, an exemption number would not be issued.

Please note that 86 Ill. Adm. Code 130.2085 provides that "[s]ales to Federal Reserve Banks, Federal Land Banks and Federal Home Loan Banks are exempt from the Retailers' Occupation Tax under the exemption for sales to governmental bodies." Only the entities specifically listed in the regulation are exempt from taxation.

Illinois regulations are enforceable in the same manner as the statutes that allow for their creation. The Illinois Administrative Procedure Act, 5 ILCS 100/1-1 et seq. sets forth the statutory procedure for rulemaking in Illinois. Department regulations go through this rulemaking procedure before adoption. The rules are initially sent to "first notice" with the Secretary of State's office, which publishes them in the Illinois Register. After the statutory period for first notice, any comments by the Secretary of State's office or the public may be incorporated into the regulations. The rules are then sent to "second notice" for review by the Joint Committee on Administrative Rules (JCAR), which is a legislative body comprised of members of both the Illinois House and Senate

Section 12 of the ROT grants the Illinois Department of Revenue the power to make such reasonable rules and regulations as may be necessary to effectively administer and enforce that Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.